

FILE COPY

Supreme Court of the United States

OCTOBER TERM, 1942

Nos. 7, 8, 20, 33 and 61

IN THE MATTER:

of

THE WESTERN PACIFIC RAILROAD COMPANY,
a corporation,

Debtor.

FREDERICK H. ECKER, JOHN W. STEDMAN and
REEVE SCHLEY, constituting the INSTITUTIONAL
BONDHOLDERS COMMITTEE,

Petitioners,

v/s.

WESTERN PACIFIC RAILROAD CORPORATION, a corporation; A. C. JAMES CO., a corporation; THE RAILROAD CREDIT CORPORATION, a corporation; THE WESTERN PACIFIC RAILROAD COMPANY, a corporation; IRVING TRUST COMPANY, a corporation, as substituted Trustee under the General and Refunding Mortgage of Western Pacific Railroad Company; RECONSTRUCTION FINANCE CORPORATION; and CROCKER FIRST NATIONAL BANK OF SAN FRANCISCO and SAMUEL ARMSTRONG, as Trustees under the First Mortgage of The Western Pacific Railroad Company, a corporation,
Respondents.

**ANSWER OF INSTITUTIONAL BONDHOLDERS
COMMITTEE**

to

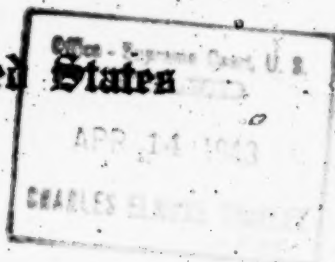
**PETITION FOR REHEARING OF THE WESTERN
PACIFIC RAILROAD COMPANY, DEBTOR,
RESPONDENT, PETITIONER**

ROBERT T. SWAINE,

*Attorney for Frederick H. Ecker, John W. Stedman
and Reeve Schley, constituting the Institutional
Bondholders Committee*

HERBERT W. CLARK,
BENJAMIN R. SHUTE,
Of Counsel.

April 14, 1943



Supreme Court of the United States

OCTOBER TERM, 1942

Nos. 7, 8, 20, 33 and 61

IN THE MATTER

of

THE WESTERN PACIFIC RAILROAD COMPANY, a corporation,
Debtor.

FREDERICK H. ECKER, JOHN W. STEDMAN and REEVE SCHLEY,
constituting the INSTITUTIONAL BONDHOLDERS' COMMITTEE,
Petitioners,

vs.

WESTERN PACIFIC RAILROAD CORPORATION, a corporation; A. C. JAMES' Co., a corporation; THE RAILROAD CREDIT CORPORATION, a corporation; THE WESTERN PACIFIC RAILROAD COMPANY, a corporation; IRVING TRUST COMPANY, a corporation, as substituted Trustee under the General and Refunding Mortgage of Western Pacific Railroad Company; RECONSTRUCTION FINANCE CORPORATION; and CROCKER FIRST NATIONAL BANK OF SAN FRANCISCO and SAMUEL ARMSTRONG, as Trustees under the First Mortgage of The Western Pacific Railroad Company, a corporation,

Respondents.

ANSWER OF INSTITUTIONAL BONDHOLDERS COMMITTEE

to

PETITION FOR REHEARING OF THE WESTERN PACIFIC RAILROAD COMPANY, DEBTOR, RESPONDENT, PETITIONER

Frederick H. Ecker, John W. Stedman, and Reeve Schley (herein called the Institutional Bondholders Committee), answering the Petition for Rehearing of The Western Pacific Railroad Company, Debtor, herein, dated April 8, 1943, respectfully show:

As to the Debtor's argument that the proceeding should be referred back to the Interstate Commerce Commission "to determine and fix the compensation due from the junior lienors to the holders of First Mortgage Bonds for their sacrifices under the Plan":

1. The Debtor, whose interest in its property has been found to be without value, is without status to assert any rights of the First Mortgage Bondholders.

2. The point now made was not included within the "Objections and Claims for Equitable Treatment" filed by the Debtor in the District Court pursuant to the provisions of subsection (e) of Section 77, nor made by the Debtor in argument in the District Court, the Circuit Court of Appeals, or the Supreme Court.¹ This Court will not examine a point raised for the first time in a petition for rehearing, where the party has failed to make it in its petition for certiorari, briefs, or argument.²

3. The contentions of the Debtor throughout the proceeding prior to the filing of the Petition for Rehearing (in contradiction of the argument now made in that Petition) were that the First Mortgage Bondholders should be subjected to further sacrifices, of the character for which the Debtor now asserts compensation should be made, and that the First Mortgage Bondholders were not entitled to

¹R. 963-73, 1645-51.

²*Independent Wireless Telegraph Company v. Radio Corporation of America*, 270 U. S. 84 (1926).

the various forms of compensation embodied in the securities and allocations under the Commission Plan against the sacrifices required of them by that Plan.¹

4. The problem of the compensation to which the First Mortgage Bondholders might be entitled for their sacrifices under the Plan was fully dealt with in the briefs of the parties and on oral argument, it being the position of the Institutional Bondholders Committee, both in its briefs and on oral argument, that while such Bondholders might succeed in a claim for further compensation, such compensation under the capitalization permitted by the Interstate Commerce Commission could only be in the form of Common Stock, and, in the light of past and prospective earnings, would have only nominal value, and in any event less value than the damage suffered by the First Mortgage Bondholders through delaying reorganization and thereby depriving the First Mortgage Bondholders (a) of income currently being earned upon their investment, and (b) a voice in the management of the property, of which they are the preponderant beneficial owners.²

II

There has been no contention by any party throughout the proceeding that Reconstruction Finance Corporation was under any legal commitment to accept the provision made for it by the Plan, any more than any other securityholder was under any such commitment. The only question dealt with before the Commission, the District Court, the Circuit Court of Appeals and the Supreme Court was

¹R. 819, 824, 826, 829, 832, 836-41, 843, 857, 963, 965, 970-71, 1645, 1646-47. See Debtor's main brief, pp. 2, 17.

²See Committee's main brief, pp. 96-104, 138-45.

whether if Reconstruction Finance Corporation did supply \$10,000,000 of new money (or accept new First Mortgage Bonds for its Trustees' Certificates issued against such new money), as provided in the Plan, it could be compensated therefor as provided in the Plan. This issue was fully dealt with in the briefs of the parties and on oral argument, and fully disposed of by the Court's opinion herein.¹

III

The question as to what evidence the District Court may hereafter take in further proceedings under Section 77 was not involved upon the appeal to the Supreme Court, that appeal being solely from an interlocutory order of approval of the Plan by the District Court pursuant to subsection (e). The evidence to be received by the District Court in the further proceedings, particularly upon the further hearing expressly provided for by Section 77 prior to the entry of an order of confirmation, is a matter for determination by the District Court when the question arises.

IV

The question whether the effective date of the Plan may be a date other than the date of the institution of the proceeding under Section 77 was fully dealt with in the briefs and on oral argument in this Court and was disposed of in the Court's opinion.²

¹See RFC main brief, pp. 56-62, RCC main brief, pp. 3-21, ACJ main brief, pp. 116-18, Committee's main brief, pp. 107-113, Committee's reply brief, pp. 26-30. Pamphlet opinion herein, pp. 25-27.

²See Debtor's main brief, pp. 6-11, Committee's main brief, pp. 139-140. Pamphlet opinion herein, p. 43.

The Institutional Bondholders Committee respectfully asks that this Court deny the Debtor's Petition.

Respectfully submitted,

ROBERT T. SWAINE,
*Attorney for Frederick H. Ecker, John W. Stedman
and Reeve Schley, constituting the Institutional
Bondholders Committee*

HERBERT W. CLARK,
BENJAMIN R. SHUTE,
Of Counsel.

April 14, 1943